CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

March 30, 2017

H.R. 1667
Financial Institution Bankruptcy Act of 2017

As ordered reported by the House Committee on the Judiciary on March 29, 2017

SUMMARY

H.R. 1667 would establish a new bankruptcy process for certain financial institutions with assets of more than $50 billion. The new process could assist institutions that may be too complex to resolve through bankruptcy proceedings under existing laws. CBO estimates that enacting the legislation would have no significant net effect on the federal budget.

Pay-as-you-go procedures apply because enacting the legislation could affect direct spending and revenues related to bankruptcy proceedings and other programs aimed at resolving the failure of banks and other financial firms. However, CBO estimates that those effects would not be significant.

CBO estimates that enacting H.R. 1667 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2028.

H.R. 1667 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

H.R. 1667 would impose a private-sector mandate, as defined in UMRA, on entities that have certain types of contracts with bank holding companies or large financial institutions that enter the bankruptcy process established under the bill. Because of uncertainty about both the number and value of contracts that would be affected and the amount of losses that would occur as a result of the bill, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates ($156 million in 2017, adjusted annually for inflation).

BASIS OF ESTIMATE

The new bankruptcy procedures in H.R. 1667 could affect the cash flows of federal programs that are currently available to resolve the failure of financial institutions. For example, it is possible that some firms eligible to use the new bankruptcy process also could use the current procedures of the Federal Deposit Insurance Corporation (FDIC) to resolve their financial difficulties. The FDIC is authorized to resolve financial problems for large, systemically important financial firms that become insolvent or are in danger of becoming insolvent.

Using the FDIC's resolution program under current law is contingent on certain conditions, including a finding by the Secretary of the Treasury that the bankruptcy process would not be appropriate for the resolution of a firm's financial difficulties. If the necessary conditions are met, the FDIC may borrow funds from the Treasury to finance resolution activities and must collect fees from other large financial firms to offset the cost of any losses; those transactions occur through the Orderly Liquidation Fund (OLF). Although any spending from the OLF for resolution activities would initially increase federal outlays, those costs would subsequently be offset by income received from selling the assets of the firm or from assessing fees. CBO anticipates that the secretary would use the OLF primarily during times of economic distress for complex financial institutions that require significant levels of capital or liquidity support. There is a very small chance that such a condition could occur in any year.

CBO expects that implementing H.R. 1667 would increase the probability that some financial firms would use the bankruptcy process instead of the FDIC process described above. The effects of that change on the cash flows of the OLF would depend on economic, legal, and strategic factors that are difficult to quantify. CBO expects that the types of financial institutions with difficulties that could be resolved under the bankruptcy provisions in H.R. 1667 would be those that otherwise would have had a negligible net effect on the budget (for example, the failure of a single firm with financial losses and liquidity requirements that largely could be covered by nonfederal resources). Shifting those types of cases from the FDIC to the bankruptcy courts probably would have no significant net effect on the budget.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that any changes in direct spending and revenues under H.R. 1667 would be insignificant over the 2017-2027 period.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1667 contains no intergovernmental mandates as defined in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1667 would impose a private-sector mandate, as defined in UMRA, on entities that have certain types of contracts with bank holding companies or large financial institutions that enter the bankruptcy process established under the bill. The bill would limit the contractual rights that those entities have under current law by imposing a temporary stay on actions to terminate or modify such contracts for 48 hours after a bankruptcy petition is filed. Limiting the ability of those entities to take such actions as collection of collateral, acceleration of debt, or closeout netting of derivatives during that two-day period could cause them to incur losses. The cost of the mandate would amount to any losses sustained by such parties as result of the stay.

As the bankruptcy process under the bill is reserved for large financial institutions, the potential losses for the parties affected by a stay could be quite substantial. However, because of uncertainty about both the number and value of contracts that would be affected and the amount of losses that would occur as a result of this provision, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates ($156 million in 2017, adjusted annually for inflation).

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